

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

OLD REPUBLIC INSURANCE COMPANY	:	
	:	
Plaintiff	:	CV 02-5145
v.	:	
	:	
LUMBERMENS MUTUAL CASUALTY	:	
COMPANY;	:	
	:	
And,	:	
	:	
THE VENATOR GROUP, INC., and	:	
FOOT LOCKER, INC.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this _____ day of _____, 200__, upon consideration of Plaintiff's Motion for Summary Judgment and the Cross Motions for Summary Judgment of Defendant, Lumbermens Mutual Casualty Company and all Responses thereto, it is hereby ORDERED and DECREED that the Motion for Summary Judgment of Plaintiff Old Republic Insurance Company is DENIED and the Lumbermen's Cross Motion for Summary Judgment is GRANTED, and accordingly, it is held that the Old Republic auto liability policy, No.: Z-35726-10, has the primary duty to defend and indemnify The Venator Group, Inc. in the underlying liability action, Ricchiuti v. The Venator Group, Inc., Civ. A. No. 99-1976 (E.D. Pa. 1999).

BY THE COURT:

Date:

J.

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COMPANY;	:	
	:	
And,	:	
	:	
THE VENATOR GROUP, INC., and	:	
FOOT LOCKER, INC.,	:	
	:	
Defendants	:	

**DEFENDANT LUMBERMENS MUTUAL CASUALTY COMPANY'S
SECOND CROSS MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Lumbermens Mutual Casualty Company, defendant and counter plaintiff, in the captioned matter and submits this Second Cross Motion for Summary Judgment filed and in support thereof respectfully show the Court the following:

1. Defendant Lumbermens adopts and incorporates by reference its Cross Motion for Summary Judgment and supporting Memorandum of Law (including all attached exhibits) filed against plaintiff, Old Republic Insurance Company as if they were fully set forth at length herein.
2. Defendant Lumbermens adopts and incorporates by reference its Response to Plaintiff's Motion for Summary Judgment and supporting Memorandum of Law as if they were fully set forth at length herein.
3. Defendant Lumbermens adopts and incorporates by reference its Response to Old Republic's Answer to Lumbermen's Cross Motion for Summary Judgment and the authority and analysis listed in support of its argument as if they were fully set forth at length herein.

WHEREFORE, in consideration of the premises set forth above, defendant Lumbermens Mutual Casualty Company, respectfully requests that this Honorable Court entering an Order denying plaintiff's Motion for Summary Judgment in all respects, and grant Lumbermens' Cross Motion for Summary Judgment, such that Old Republic Insurance Company has the primary responsibility to defend and indemnify The Venator Group in the underlying liability action via its auto liability policy.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY:

WILLIAM K. CONKIN
Identification No. 75881
1845 Walnut Street, 18th Floor
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215-575-2761
Attorney for Defendant and Counter Plaintiff
Lumbermens Mutual Casualty Company

Date: _____

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COMPANY;	:	
	:	
And,	:	
	:	
THE VENATOR GROUP, INC., and	:	
FOOT LOCKER, INC.,	:	
	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, William K. Conkin, Esquire hereby certify that a true and correct copy of Lumbermens Mutual Casualty Company's Second Cross Motion for Summary Judgment was served by U.S. Mail, First Class to:

Peter Kennedy, Esquire
M.Jane Goode, Esquire
Hecker, Brown, Sherry & Johnson
1700 Two Logan Square
18th & Arch Streets
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Edward L. McCandless, Esquire
Chad Stollie, Esquire
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1700 Sansom Street. 12th Floor
Philadelphia, PA 19103-5215

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY: _____
WILLIAM K. CONKIN, ESQUIRE
Attorney for Defendants

Date: _____
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